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UNITED NATIONS CONFERENCE ON THE LIABILITY OF OPERATORS OF TRANSPORT TERMINALS IN INTERNATIONAL TRADE

FIRST COMMITTEE

SUMMARY RECORD OF THE 10th MEETING

Held at the Austria Center Vienna,
on Tuesday, 9 April 1991, at 2.30 p.m.

Chairman: Mr. BERAUDO (France)

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Distr.: 18 April 1991

The meeting was called to order at 2.40 p.m.

CONSIDERATION OF ARTICLES 1 TO 16 AND 20 OF THE DRAFT CONVENTION ON THE LIABILITY OF OPERATORS OF TRANSPORT TERMINALS IN INTERNATIONAL TRADE (agenda item 3) (continued) (A/CONF.152/5, 6, 7 and Add.1 and Add.1/Corr.1 and Add.2)

Article 6 (continued) (A/CONF.152/C.1/L.12)

1. Mr. SCHROCK (Germany) introduced his delegation's proposal to add a new paragraph 1 bis to article 6 and to make amendments to paragraph 1 (A/CONF.152/C.1/L.12, paras. 2 and 3). One of the Canadian Government's written comments on the draft Convention (A/CONF.152/7) had been that the prescribed measure of liability - units of account per kilogram of gross weight - could create problems for goods that were not shipped by weight but by volume or pieces. In such circumstances, if the weight of the goods was not known, it would be impossible to calculate the limit of liability. The draft Convention at present provided for a limit based exclusively on the gross weight of goods lost or damaged, thus precluding the customer, in certain circumstances, from calculating his claim per package or per unit.

2. The question was, whether to have only a limit based on weight or, in addition, an alternative limit based on a package and freight unit. Had the Committee agreed on relatively high limits of liability, the alternative method of calculation might not have been considered necessary, although the concerns of the Canadian delegation would have remained. It was true that a limit per package might create practical problems, especially with containerized goods, but complications could not always be avoided and the simplest solution was not necessarily the most workable or equitable one. It had also been pointed out that the proposed new system would make the documentation required under article 4 somewhat complex. The suggested new paragraph 1 bis was based on article 6 (2) (a) of the Hamburg Rules, but since the bill of lading or other document mentioned in that provision was of a different nature from the document prescribed by article 4 of the draft Convention, the new subparagraph (a) stated a rebuttable presumption that the packages or other shipping units enumerated in the document were in fact packages or shipping units. That would cover the case of containerized goods.

3. It might be argued that the proposal did not solve all the problems involved in ensuring that the customer could make an appropriate claim. The customer would, however, be able to fall back on the general rules under which he would have to prove the number of packages or units lost or damaged as a basis for calculating his claim. If, therefore, the language of the proposal was of no direct use to the claimant, it would at least give him more options than he had under the draft Convention as it stood, since that excluded any possibility of basing a claim on a limit per package. He reiterated that the proposed system of an alternative method of calculation followed the pattern of article 6 (2) of the Hamburg Rules; it also reflected article 4 (5) of the Hague-Visby Rules.

4. Mr. HORNBY (Canada) thanked the German delegation for its proposal. It accurately reflected his own delegation's views with regard to the need for a limit per package or per shipping unit in the Convention. It had been argued that the absence of such a limit would lead to great difficulties if the cargo had been shipped otherwise than by weight, which was the only limit at present provided for in article 6 (1). Cargo was often shipped by volume or by package, particularly from developing countries or countries exporting primary products. How under the draft Convention as it stood, would the weight of lost cargo be determined if it

(Mr. Hornby, Canada)

had not been shipped on a per package or per volume basis and the operator removed it from the ship and it fell into the sea and disappeared? If it had not been shipped by weight, it would be very difficult to determine the basis of liability. The Canadian delegation therefore supported the proposal to add the limit per package or other shipping unit to the Convention; it would go a long way towards solving one of the problems that marine terminal operators in particular would face under the existing draft. The representative of Germany had referred to some of the problems that might arise with a limit per package, but in a great many countries that notion had been used successfully in litigation and was now well understood and applicable to the law of carriage. It fitted well into the Convention.

5. Mr. CASTILLO (Philippines) said that at its 8th meeting the Committee had decided to retain paragraph 1 (b) of article 6 on the ground that goods transported by waterborne craft were heavier and less expensive. That implied that different types of goods should be compensated differently for loss or damage, and various transport instruments had been mentioned in that connection. It was perfectly obvious, however, that one cubic foot of pelts and animal skins might be more valuable than a ton of grain or sugar, yet on the basis of the operator's liability under paragraph 1 (a) of article 6 their value would be the same per kilogram of gross weight of the goods damaged or lost. Furthermore, as the Canadian Government had aptly observed in its written comments (A/CONF.152/7), the present measure of liability could create problems for goods not shipped by weight but by volume or pieces. It was sound business practice to insure goods for adequate compensation in the event of loss or damage, but insurance was an activity in which the developing countries were not in a position to compete. His delegation therefore supported the German proposal.

6. Mr. CHRISTOV (Bulgaria) asked whether the words "units of account per package or other shipping unit" were to be introduced into both the subparagraphs of article 6 (1).

7. Mr. SCHROCK (Germany) said that paragraph 2 of his delegation's proposal (A/CONF.152/C.1/L.12) set out the changes that would result from the approval by the Committee of the alternative method of calculation. Those amendments would apply regardless of the Committee's decision not to delete article 6 (1) (b).

8. Mr. RUSTAND (Sweden) said that it had not been clear to him any more than to the representative of Bulgaria whether the package notion was to be introduced into both subparagraphs. However in the light of the explanation given by the representative of Germany, the intention appeared to be to have a dual system in respect of the carriage of goods by sea as well.

9. In its written submission to the Conference on article 6 (A/CONF.152/7/Add.1), his Government had expressed support for a limit per kilogram only. The discussion in the Working Group on International Contract Practices and at the twenty-second session of the Commission had highlighted the practical difficulties involved in introducing the package notion. After hearing the remarks made by the representatives of Germany and Canada he was no longer convinced that those practical difficulties could not be overcome. There were three main obstacles which had been discussed in the past. The first was the problem of defining what was meant by packages and units of account; an example had been given of how that might be solved by means of the corresponding provision of the Hague-Visby Rules.

(Mr. Rustand, Sweden)

The second obstacle was to determine how many packages or other shipping units a container held; that, however, could be solved by a burden-of-proof rule. The third obstacle was the additional rules regarding the document to be used by the operator. Sweden's position at the present Conference was very flexible. If a majority favoured the German proposal, it would be happy to join that majority.

10. Ms. SISULA-TULOKAS (Finland) asked whether the representative of Germany had any thoughts about the level at which unit limits should be set.

11. Mr. BONELL (Italy) said that his delegation would be prepared to support the proposal.

12. Ms. SKOVBY (Denmark) said that her delegation could not support the German proposal and did not believe that the unit notion was properly understood. Court cases had been withdrawn in Nordic countries because settlements based on the unit had been considered undesirable. For modes of transport such as road, rail and air there was only a weight limit, but claim problems were solved nevertheless. The Convention should not contain a double system for limits of liability.

13. Mr. OCHIAI (Japan) said that his delegation also opposed the German proposal. If the package notion was introduced, the Committee would have to solve the very difficult problem of defining a package or unit. Also, with the proposed "container clause" - the suggested new paragraph 1 bis - there still remained the very difficult problem of cases in which the document called for in article 4 (1) was not issued.

14. Mr. MORAN (Spain) said that his delegation could not support the German proposal and preferred the text as originally drafted. There were many complications with the limit per package whereas the limit per kilogram was adequate and straightforward. Being involved in the carriage of goods, the operator might have to redistribute goods received at the terminal to a variety of places and by a variety of forms of transport, perhaps by emptying containers, transferring the contents to another type of container and possibly even packaging them. The operator should perhaps assume a greater degree of liability for certain types of package, as the representative of the Philippines had indicated; that would involve certain contractual obligations. The limit per kilogram could still apply very flexibly and in a practical way.

15. Mr. PAMBOU-TCHIVOUNDA (Gabon) agreed that the introduction of a limit based on the notion of a package would be very complicated and virtually impossible to apply. It might be understood from the proposed text that a container and pallet were similar, yet in practical terms they were not interchangeable and did not serve the same purpose. Furthermore, nobody could tell what was in a container and the case might even arise where an empty container had to be covered by the same rules as a full one. He endorsed the objections to the German proposal put forward by the representatives of Spain and Japan and would prefer the draft to contain the limit per kilogram only.

16. Mrs. EL OTMANI (Morocco) joined in opposing the German proposal, not only for the reasons already advanced, but also because weight was invariably a criterion in determining liability in matters of transport; moreover, the application of a limit of liability per package or other shipping unit would pose considerable problems when containers were used, given that transport terminal operators often

(Mrs. El Otmani, Morocco)

received such articles without knowing or being in a position to determine their contents; in the case of maritime transport even bills of lading only listed what they were "said to contain".

17. Mr. ABASCAL (Mexico) approved the proposal, arguing that it offered more options to potential injured parties. Dual regulation would, moreover, make it easier to define the limits of liability and responsibility, especially in the case of goods that were not considered simply in terms of gross weight for transport purposes. Those familiar with the preparatory work in the Commission would recall the lengthy discussions of the difficulties inherent in a single limit of liability based on weight; such difficulties as might persist with regard to the definition of packages or other shipping units were surely no greater. In the final analysis, he considered the German solution to represent the lesser of two evils.

18. Mr. MUTZ (Observer, Intergovernmental Organization for International Carriage by Rail) stated, in response to the remarks made by the representative of Denmark, that a limit of liability per package was not entirely unknown in rail transport. What was more important, the German proposal permitted a maximum limit not less than the limit per kilogram of gross weight which had been set in the case of international carriage by road and by rail at 8.33 and 17 units of account respectively. In most cases, those limits guaranteed reasonable compensation, while other mechanisms connected with rail transport permitted full compensation. Recalling that the arguments put forward at the 8th meeting in favour of limits derived from the maritime sphere had been founded on the real value of merchandise transported, he urged the Committee to accept the German proposal as a logical means of taking account of the realities inherent in different modes of transport.

19. Mr. WEISER (International Union of Marine Insurance), speaking at the invitation of the Chairman, favoured the German proposal for the fact that it could be related to the existing conventions governing modern sea transport, as well as to the Multimodal Convention. He submitted that the proposal on liability drafted by the Commission marked a retrograde step when set against the mass of containerized cargo now to be found in ports and terminals. He added that those concerned with maritime transport, as well as tribunals and insurers, would not be taken by surprise if the dual system were introduced. He pointed out that the words "whichever is the higher" in the German proposal would deter a claimant from opting for the limit of liability per package or unit if it was lower than the limit per kilogram of gross weight; the proposal thus favoured all interested parties, including the owner of the cargo.

20. The CHAIRMAN invited the Committee to vote on the proposal in paragraph 2 of document A/CONF.152/C.1/L.12.

21. The proposal was rejected by 19 votes to 14, with 4 abstentions.

22. The CHAIRMAN noted that the result of the vote rendered obsolete the proposal in paragraph 3 of document A/CONF.152/C.1/L.12.

New article 6 bis (A/CONF.152/C.1/L.13)

23. Mr. SCHROCK (Germany) introduced the proposal in document A/CONF.152/C.1/L.13. The reasons for his delegation's suggestion that the Convention should include a provision on the aggregate liability of an operator resulting from all claims

(Mr. Schrock, Germany)

arising out of a single occurrence were set out in paragraph 7 of its written comments on the draft (A/CONF.152/7), to which he referred the Committee. The matter had been deliberated at length during the Commission's preparatory work. His delegation believed that the Convention should lay down a single aggregate amount for claims; the figure which it proposed was merely indicative, and was based on a professional assessment by a German ports authority of the highest global limit for a ship-owner liable for an amount calculated on the basis of the cargo of an average container ship.

24. Mr. RUSTAND (Sweden) expressed his delegation's strong endorsement of the German proposal and called attention to its comments on the matter in document A/CONF.152/7/Add.1. Swedish insurers had stressed that in the absence of a global limitation on the aggregate liability of transport terminal operators, the insurance market might not be inclined, or even have the capacity, to provide coverage on the scale required by very large terminals storing or handling enormous quantities of goods at one and the same time. Moreover, the cost of such cover, if it could be found, would obviously be very high, if not prohibitive. It was consequently the Swedish delegation's view that the Conference should reflect seriously on the matter, taking the German proposal as the basis for its deliberations. For his part, he was not convinced that the indicative figure was sufficiently high: his view was that it should be set high enough to allow for all normal accidents, but not catastrophic ones. The observations of representatives of the insurance industry would be welcome on that point. He suggested that if the principle underlying the proposal was approved, the actual figure should be discussed at the same time as those to be inserted in article 6 (1) (a) and 6 (1) (b).

25. Mr. MARSHALL (United Kingdom) agreed most strongly that a global limit of liability was called for. As the previous speaker had indicated, in responding positively to a request for cover from an operator with an extremely high liability, an insurer might see his own business unbalanced and his entire solvency threatened; that eventuality would be of considerable concern to insurance supervisory departments of governments. Moreover, in providing cover, an insurer must fix a limit; he could not commit himself to incalculable risks involving losses far beyond his own resources or his ability to reinsure. With unlimited liability, operators would have to bear burdens beyond those actually covered by their insurance; in case of catastrophe they, or the owners of a terminal - which might be a State - could be faced with literally devastating claims. The higher the limits of liability, the higher the price of the top layers of insurance protection would be, because of reduced competition for such business and the cost of the reinsurance that it would necessitate. He added in passing that the recent history of marine insurance had seen vertiginous drops in the availability of reinsurance.

26. He agreed with the representative of Sweden that the suggested limit of 10 million units of account was somewhat too low; it was his own strictly personal view that 20-30 million units might be more appropriate. In conclusion, he submitted that without some measure of global protection for a terminal operator, not only he, but the insurance market behind him, and perhaps beyond that even the entire economy of his country, could be placed in jeopardy.

27. Ms. FAGHFOURI (United Nations Conference on Trade and Development) joined in endorsing the principle behind the proposal. The extremely high level of potential liability that would result from the absence of a global limit would cause very serious problems for terminal operators, especially in the developing countries.

(Ms. Faghfouri, United Nations Conference on Trade and Development)

Conventions dealing with the liability of carriers using any mode of transport established a quantifiable maximum loss, which was of the order of a single cargo. Terminal operators could have potentially enormous values at stake, representing a great many cargoes; the possibility of unlimited accumulation of liability following an accident made it imperative to secure the highest possible insurance cover, whose cost would rise steeply with the liability limits. The developing countries had to rely heavily on reinsurance protection from the developed world; having to provide increased cover for terminal operators would make further demands on their scarce foreign exchange resources.

28. Insurers also had to quantify their own aggregate exposure and decide on the maximum they would pay in any single event. As the representative of the United Kingdom had remarked, the operator might not be covered beyond that maximum. Moreover, if he was to stay in business, the terminal operator must obviously cover his costs; he would naturally pass on increased charges to shippers, and that could only have an adverse effect on international trade. That being said, it would be very hard to find a commonly acceptable and realistic global liability limit that was neither too high for some nor too low for others. The matter called for further very careful consideration, and perhaps a quest for new approaches, especially in view of the constantly high levels of loss occurring in many terminals throughout the world.

29. Mr. ROJANAPHRUK (Thailand) said he found the German proposal as drafted difficult to understand. There seemed to be a contradiction between its two sentences, the first stipulating that in no case should the aggregate liability exceed 10 million units of account, the second appearing to provide for such cases. In his view, the second sentence covered the essence of the matter, but he was not sure that the article needed to refer to the proportional distribution of the amount payable; that should be an automatic procedure.

30. Mr. SWEENEY (United States of America) pointed out that the purpose of the draft Convention was to rationalize an existing industry in which, in his country, there was at present no global limit on the operator's liability insurance or one applicable to self-insured terminals. Albeit with the best of intentions, the proposal sought to impose an artificial cap - something which had never been discussed in the Commission's preparatory work - on limits of liability. Past experience had shown such action to be an exercise in inflexibility, with the most harmful consequences, as exemplified by the 1969 International Convention on Civil Liability for Oil Pollution Damage and the 1971 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage. Those instruments also contained caps, yet the huge oil-related disasters which had occurred since the Torrey Canyon incident in 1967 had been overwhelmingly greater than the applicable caps in terms of damage caused and actual costs, demonstrating them to be woefully inadequate. Moreover, the consequences of the proposal might prove extremely expensive for transport terminal operators because, notwithstanding possible competition, insurance companies might use the provision as a pretext for selling only expensive policies covering the maximum liability. Lastly, he clearly recalled that when the question of the amount of insurance cover available in oil pollution disasters - and also in the case of accidents to multi-engined aircraft - had been discussed, the insurance industry had admitted to its ability to deal with catastrophic losses in the range of US$500 million. He therefore considered that even if the principle of liability capping was approved, the figure advanced in the German proposal was clearly too low.

(Mr. Sweeney, United States of America)

31. To sum up, there was no global limit at present on the liability of operators of transport terminals; such a limit had never been talked about in the past; and arbitrary caps on liability had been shown not to work. For those reasons, the United States delegation opposed the German proposal.

32. Mr. CHRISTOV (Bulgaria) said that article 6 (1) (c) of the Hamburg Rules made a clear reference to aggregate liability for losses and delays. He felt it would be best if the Convention catered for aggregate liability as laid down in that provision of the Hamburg Rules.

33. Ms. SISULA-TULOKAS (Finland) associated herself in principle with the view expressed by the United States representative. In her view, a global limit of liability was essentially a concept of maritime law. There were many activities on land where great risk was involved but liability was unlimited. It was difficult to see why the notion of limited aggregate liability should be introduced into a draft Convention which was concerned mainly with land operations.

34. Mr. FILIPOVIĆ (Yugoslavia) opposed the German proposal because he felt that a global limit was necessary only in the case of hazardous activities involving great and incalculable risk. In the operation of transport terminals, liability was contractual and already limited. He did not think it was appropriate to introduce another layer of limitation. Presumably, any ceiling on aggregate liability that might be imposed should depend on the size of the terminal.

35. Mr. ZHAO Chengbi (China) said that he did not favour the proposal. The knowledge that liability was limited to 10 million units of account might actually encourage negligence. He also felt that the Convention was being impelled to focus more on the interest of operators than on that of customers. It was necessary that both interests should be protected in order to allow the greatest possible number of countries to accept the Convention.

36. Mr. OCHIAI (Japan) endorsed the views of the United States and Chinese representatives.

37. Mr. SCHROCK (Germany) said that one of the reasons advanced by the representative of the United States for not supporting the proposal was that an organized transport terminal industry already existed in that country without benefit of a global limitation of liability. One existed in Germany as well. It should be kept in mind, however, that in many countries the operator's liability was not covered by mandatory law and he could escape it or reduce it contractually.

38. The German proposal should not have come as a surprise to the United States delegation. There were several references to such a possibility in the preparatory work for the Conference. For example, in the report of the Working Group on International Contract Practices on the work of its eleventh session in 1988 (A/CN.9/298), there was a suggestion in paragraph 97 that when the draft Convention was circulated for comments Governments might consider the possibility of establishing an overall limit to the liability of the operator in order to cover all claims arising from a single catastrophic event. His predecessor had been present at that session and had prepared a memorandum stating that the concept of global limitation was well known in maritime law; that the maximum liability that could arise under article 6 as it stood would lead to an incalculable and uninsurable risk for the operator of the transport terminal; that, since it would be difficult to

(Mr. Schrock, Germany)

find a formula that could fix a global limitation generally and uniformly for all transport terminals, the global limit might be based on the size of the terminal or on its annual turnover; and that the Secretariat might look into current practice and report to UNCITRAL on the matter at its next session. Other references to the possibility of limiting aggregate liability could be found in the UNCTAD document on the commercial risk sector in container terminal management (ST/SHIP/12) and in paragraph 3 (b) of the compilation of comments by Governments issued for the twenty-second session of UNCITRAL (A/CN.9/319/Add.1).

39. Mr. RUSTAND (Sweden) said that the question had indeed been raised by the delegation of the Federal Republic of Germany at the eleventh session of the Working Group on International Contract Practices. Regarding the system in force in the field of oil pollution, including that in the two oil pollution conventions to which the United States had referred, he observed that the oil pollution compensation system had operated successfully for 12 years. The system had been ratified by more than 50 States and the global limit had been exceeded only once. There had been an effort to raise the ceiling in 1984, supported at the time by the United States, and an instrument had been drafted on lines suggested by that country. The United States Congress, however, had decided that the United States should not ratify the instrument, greatly to the regret of the rest of the world, and had opted instead for unlimited liability. There were, however, many examples of global liability limits that were working well and many States had found that it was in their interest to be parties to the instruments concerned. Finland had said that there were no examples of such limits for land-based activities, but there were in fact several in the nuclear field as well as in some transport-related conventions. It would be useful for the Committee to hear the comments of the insurance industry on the subject.

40. Mr. ILLESCAS (Spain) said that the Convention was dealing with an industrialized and land-based activity which, though linked with transport, was not in itself a transport activity. Accordingly, transport risks, and maritime risks in particular, should not apply. Land-based activities were not usually subject to a global liability limit. Also, there was no tradition of quantitative limits on liability for fault or neglect on the part of the operator under article 5 (2). His delegation could not, therefore, support the proposal.

41. Ms. SKOVBY (Denmark) opposed the proposal on the ground that the operation of a transport terminal was a land based activity. If the Committee decided to take a maritime approach, however, and introduce a global limit, it would need to be based on the area of the terminal in order to safeguard small terminals.

42. Mr. ROMAN (Belgium) said that he could support the proposal if it took into account the nature of the goods handled in a particular terminal instead of making uniform provision for all kinds of terminal.

43. Mr. MKWENTLA (Pan Africanist Congress of Azania) said that, under his country's legal system, where a provision expressed negatively contained the word "shall", the whole provision became peremptory. The first sentence of the German proposal was therefore an imperative one and there was no need for the second sentence.

44. Mr. SWEENEY (United States of America) said that one reason why the Convention was attractive to the United States was that laws on liability were a matter purely for its various states. Thus, there were 50 separate laws on the liability of

(Mr. Sweeney, United States of America)

operators of transport terminals. In some states, it was a bailee's liability, meaning strict liability; in others, it was a negligence-based contractual liability without exculpatory clauses, and in still others, a negligence-based liability with exculpatory clauses. It was a vastly complicated question. It was not correct to assume that all over the world a terminal operator could limit his liability by means of a contractual clause. It was certainly not so in the United States. In many places, a contractual clause that permitted the operator to limit his liability for negligence would be held to be contrary to public policy.

45. Mr. WEISER (International Union of Marine Insurance), speaking at the invitation of the Chairman, said that the Union's members came from developing as well as developed countries. He therefore supported the German proposal. The representatives of Sweden and the United Kingdom had pointed to the likely financial consequences if the Convention provided for unlimited liability without a global ceiling. To impose a global ceiling would not mean that insurers would offer only policies for that figure. Competition would prevent that happening, and in any case transport terminal operators would sometimes wish to bear the remaining risk themselves.

46. Only in exceptional cases would losses exceed a reasonable maximum. Transport terminal operators were not, after all, exposed to the level of risk run by oil tanker owners. However, without a global limit it was only too likely that in many markets, especially in developing countries, the risks involved would call for costly reinsurance protection. Admittedly, the calculation of liability according to kilograms of gross weight would radically alter the basis of liability assumed by terminal operators. Under the existing well-balanced system of cargo and liability insurance, cargo owners and insurers were satisfied if the operator's contractual liability was kept relatively low. The new system would not eliminate the need for cargo insurance, since the cargo owner needed protection against loss or damage to the cargo while in transit. Nor would cargo insurance premiums be reduced; recourse actions before foreign courts were extremely expensive and would result in increased costs for the consumer. The proposal for a global limit was not a new idea. Transport terminal operators already bought fixed amounts of insurance cover which might not be sufficient indefinitely. As the representative of the United Kingdom had pointed out, a system of unlimited liability would not mean the insurer granting the terminal operator unlimited cover: cover would simply be kept to a fixed limit at higher cost. The operator would have to bear the remaining burden, in order to avert the risk of bankruptcy and severe economic damage to the local trading community. That was why the International Union of Marine Insurance supported the German proposal for a global limit, provided the amount fixed was reasonable.

47. Mr. LEBEDEV (Union of Soviet Socialist Republics) noted that much had been said both for and against the introduction of a global liability limit. It should not be forgotten that the draft must be acceptable to all parties, including developing countries and industrial concerns. There was a risk that without a global limit, it would be less acceptable to the latter. It had been argued that a global limit would substantially increase premiums and would adversely affect both transport terminal operators and industry in general. That argument should not be accepted at face value without considering the experience of operators themselves in different countries with regard to liability insurance, or hearing what the insurance companies had to say. In many legal systems, the operator's liability was already limited under insurance policies. In article 6 the aim was, of course, to fix an objective limit for liability at a high aggregate level. In his view, the proposed change was unlikely to inconvenience either operators or insurers.

(Mr. Lebedev, Union of Soviet Socialist Republics)

48. He drew attention to the words "in no case" in the German proposal. Did the phrase signify that the amount payable by the operator would not exceed 10 million units of account even if the basis of the liability was an act of negligence on his part? In the second sentence, it was not clear how much the operator would have to pay. The representative of Germany had referred to the antecedents to the proposal for a global limit; he had also argued that the instruments governing compensation for oil pollution bore out the need for a global limit in the Convention. There was no need for such comparative exercises, because the activities envisaged in those instruments and in the present draft had nothing in common.

49. Mr. SCHROCK (Germany), replying to the observations made in the discussion of his proposal, said that the suggested new article 6 bis consisted of two sentences. He requested that a separate vote be taken on the first sentence before proceeding, if necessary, to a vote on the second. It was the first sentence that enshrined the basic principle of a global limit of liability. It was to be construed as meaning that where the aggregate liability of the operator resulted from a single occurrence, the amount payable by the operator would not exceed 10 million units of account. However, in the light of the discussion, he now proposed the following reformulation of that sentence:

> "The aggregate liability of the operator resulting from all claims arising out of a single occurrence shall not exceed [...] units of account."

If the Committee accepted the principle of the global limit, it could then decide on an appropriate figure.

50. In the second sentence, the issue was the principle underlying the distribution of that sum in cases where damage caused by a single occurrence exceeded it. If the Committee approved the first sentence, some revision might be called for in the second.

51. Mr. LEBEDEV (Union of Soviet Socialist Republics) asked whether the German proposal would form a separate article, to follow article 6. If so, how would it relate to article 8, which excluded the limitation of liability in certain circumstances?

52. The CHAIRMAN explained that the scope of the reformulated proposal would be confined to article 6. It would not apply in the circumstances envisaged in article 8. Its proper place would be within and at the end of article 6, because if it was made a separate article its application would extend to the whole of the Convention. He asked the representative of Germany whether the proposed aggregate figure would apply to the limits of liability that might be agreed by the operator under article 6 (4).

53. Mr. SCHROCK (Germany) thought it unlikely that the operator could be made liable for claims which, in aggregate, exceeded the global limit. As to article 8, it was not yet clear how his proposal would be affected by it. In his view, the new article 6 bis could either stand alone or form part of article 6, depending on the Committee's decision.

54. The CHAIRMAN invited the Committee to vote on the first sentence of the new article proposed by Germany in document A/CONF.152/C.1/L.13, as orally amended by its sponsor.

55. The sentence was rejected by 18 votes to 9, with 8 abstentions.

56. The CHAIRMAN said that the result of the vote rendered obsolete the remainder of the proposal in document A/CONF.152/C.1/L.13. Since there were no further proposals for article 6, he would take it that the Committee approved the text of article 6 reproduced in document A/CONF.152/5, as amended at the 8th meeting, and referred it to the Drafting Committee.

57. It was so decided.

58. Ms. SKOVBY (Denmark) asked whether the term "consignment" in article 6 (2) referred to the goods evidenced by the document prescribed in article 4.

59. The CHAIRMAN said that under article 6 (2) the total charges payable to the operator for a consignment signified the sum payable for all his services in respect of the goods.

The meeting rose at 5.35 p.m.